

**Statement of NARAL Pro-Choice America
U.S. House Committee on the Judiciary
"Undue Influence: Operation Higher Court and Politicking at SCOTUS"
December 8, 2022**

Thank you for the opportunity to submit a statement to the Committee on this critical issue. NARAL Pro-Choice America is a national advocacy organization dedicated to protecting and advancing reproductive freedom. For over 50 years, NARAL has fought to protect and advance reproductive freedom at the federal and state levels—including access to abortion care, birth control, pregnancy and post-partum care, and paid family leave. Through education, organizing, and influencing public policy, NARAL and our 4 million members from every corner of the country work to guarantee every individual has the freedom to make personal decisions about their lives, bodies, and futures, free from political interference. For this reason, we are submitting this statement to highlight the impact that undue influence has on the U.S. Supreme Court, the threats this influence poses to reproductive freedom and democracy at large, and to call on Congress to pass long overdue Supreme Court ethics reform.

This hearing comes in the wake of an explosive *New York Times* report that revealed how a longtime anti-choice activist was told the outcome of the Supreme Court's 2014 decision in *Burwell v. Hobby Lobby Stores* "weeks before it was announced," allowing him "to prepare a public relations push" and tip off the head of the Hobby Lobby chain.¹ The details of the investigation demonstrate how not only did Justice Samuel Alito, the author of the *Hobby Lobby* decision, reveal the outcome of the case to conservative extremists, but that he and other justices also had long-standing, personal relationships with them—giving the far right unique and unchecked access to our nation's highest court.

The news of the *Hobby Lobby* leak follows the leak of the *Dobbs v. Jackson Women's Health Organization* decision earlier this year, where the Supreme Court ended the constitutional right to abortion as we know it, signaling an ominous sign for the future of abortion rights in this country. While less details are available about this more recent leak, reporting shows that the leader of the same group associated with the *Hobby Lobby* leak, Faith and Liberty, bragged about praying with some of the Justices inside the Supreme Court building.² This group also filed an amicus brief in *Dobbs*—which Justice Alito cited in the opinion he authored overturning the right to abortion.³

This conspiratorial dynamic between far right elements and the Supreme Court, combined with the eventual overturning of *Roe v. Wade*, should not come as a surprise. It is part of a decades-long campaign waged by the anti-choice movement and the politicians that do its bidding to end *Roe* and decimate reproductive freedom—despite the fact that the vast majority of Americans support reproductive freedom. Polling shows that 8 in 10 Americans support the legal right to abortion.⁴

The negative impact this cruel Supreme Court decision is inflicting cannot be overstated. This horrifying rollback of our fundamental rights is causing immediate and devastating harm to millions of people across the country who can no longer access the care they need in their own

communities. Bans on abortion most harm those already marginalized at every turn by our systems and institutions, and losing *Roe* only compounds this. Women; Black, Latina/x, Asian American, Native Hawaiian, Pacific Islander, and Indigenous people; those working to make ends meet; the LGBTQ+ community; immigrants; young people; those living in rural communities; people with disabilities, and other historically oppressed communities are disproportionately impacted by these attacks on reproductive freedom.

We did not get here by accident. The threats that our most cherished rights and freedoms face are the result of a decades-long, far-right strategy to advance a radical and out-of-touch ideological agenda—including through directly influencing the Supreme Court and federal judiciary at large. In the late 1970s, radical conservatives weaponized the formerly non-political, back-burner issue of abortion rights as political cover for their efforts to maintain white patriarchal control amidst diminishing support for racist policies like school segregation, which had previously been the backbone of their movement. In the years immediately preceding and following *Roe v. Wade*, Evangelical Christians, who now form the backbone of the GOP, were overwhelmingly indifferent on the issue of abortion. But through the carefully crafted messages of Paul Weyrich, Jerry Falwell, and other architects of the far right, abortion became the political tool of choice for a movement determined to maintain control in a changing world, and the trojan horse for a far-reaching array of ideologies meant to thwart social progress.⁵

As part of this effort, anti-choice activists have spent decades building their influence over the federal judiciary through well-funded, secretive networks like the Federalist Society. This coordinated strategy to execute their agenda through the courts was aided, in part, by the fact that the Supreme Court—unlike the rest of the federal judiciary—is not bound by a judicial code of ethics.⁶ Conservative activists have never been shy about the fact that their takeover of the federal judiciary is part of a broad strategy to quell the majority and cement minority rule, but the election of Donald Trump took this tactic to new heights.

In May 2016, Trump pledged to only nominate anti-choice judges, a promise he doubled down on in 2020.^{7,8} And with the help of Senator Mitch McConnell, Trump installed anti-choice federal judges with lifetime appointments at a breakneck pace. More than a quarter of currently active federal judges are now Trump appointees, including Supreme Court justices Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett—tipping the balance of the Court to a supermajority unmistakably hostile to reproductive freedom.⁹ Now, the work of these extremists has culminated in the end of *Roe v. Wade* and an anti-choice majority on the Court that poses a threat to all of our most fundamental freedoms.

The threat to our fundamental rights does not stop with abortion. The same anti-choice, anti-freedom extremists working harder than ever to roll back abortion rights and access are also targeting our other fundamental freedoms, including birth control access, our freedom to vote, LGBTQ+ rights, civil rights, and more. There's simply no low they won't sink to in order to advance their quest for control and political gain. These recent reports of covert and nefarious efforts by the extreme right to circumvent democratic processes and directly influence the

Supreme Court should concern every individual who cares about protecting democracy and the fundamental rights it enshrines.

Without proactively addressing the current lack of transparency, accountability and ethics at the highest court, the Supreme Court's legitimacy—including declining public faith in the institution¹⁰—will only continue to erode. We know that bold and creative ideas are needed to figure out how to address the damage to our democracy. This is about restoring our democracy and the legitimacy of one of our three branches of government. In response to this new information about the collusion of Supreme Court justices and far-right extremists, NARAL applauds this Committee's efforts to investigate undue influence on the Supreme Court and urges the Senate to do the same. NARAL also calls on Congress to pass meaningful court reform, which must address the critical need for ethics reform at the Supreme Court. Legislation like the Supreme Court Ethics, Recusal, and Transparency Act of 2022 (H.R. 7647), which NARAL Pro-Choice America endorsed, would be an opportune starting point.

As has become undeniably clear this past year, the conservative supermajority on the Supreme Court is issuing decisions with catastrophic repercussions for our fundamental rights and freedoms. While the Court's collusive relationship with the far right is nothing short of shocking, the fight for democracy, fundamental rights, and reproductive freedom is far from over. Our rights and our freedoms are on the line—with real consequences for our lives and families. The stakes could not be higher, and we will never stop fighting to make sure reproductive freedom is a reality for *everybody*.

¹ Jodi Kantor and Jo Becker, *Former Anti-Abortion Leader Alleges Another Supreme Court Breach*, New York Times, Nov. 19, 2022, available at <https://www.nytimes.com/2022/11/19/us/supreme-court-leak-abortion-roe-wade.html>.

² Kara Voght and Tim Dickinson, *SCOTUS Justices 'Prayed With' Her - Then Cited Her Bosses to End Roe*, Rolling Stone, July 6, 2022, available at <https://www.rollingstone.com/politics/politics-features/roe-supreme-court-justices-1378046/>.

³ *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2556 (2022).

⁴ Megan Brenan, *Record-High 47% in U.S. Think Abortion Is Morally Acceptable*, GALLUP, (Jun. 19, 2021), <https://news.gallup.com/poll/350756/record-high-think-abortion-morally-acceptable.aspx>.

⁵ Randall Balmer, *The Real Origins of the Religious Right*, POLITICO MAGAZINE (May 27, 2014), <https://www.politico.com/magazine/story/2014/05/religious-right-real-origins-107133>.

⁶ See Final Report, *Presidential Commission on the Supreme Court of the United States* (December 2021), available at <https://www.whitehouse.gov/wp-content/uploads/2021/12/SCOTUS-Report-Final-12.8.21-1.pdf>.

⁷ Trump Letter on Pro-Life Coalition, Sept. 2016, <https://www.sba-list.org/wp-content/uploads/2016/09/Trump-Letter-on-ProLife-Coalition.pdf>.

⁸ Pro-Life Voices for Trump 2020, Sept. 3, 2020, https://cdn.donaldjtrump.com/public-files/press_assets/pro-life-letter-potus.pdf.

⁹ John Gramlich, *How Trump compares with other recent presidents in appointing federal judges*, PEW RESEARCH CENTER (Jan. 13, 2021), <https://www.pewresearch.org/fact-tank/2021/01/13/how-trump-compares-with-other-recent-presidents-in-appointing-federal-judges/>.

¹⁰ Jeffrey M. Jones, *Confidence in U.S. Supreme Court Sinks to Historic Low*, GALLUP (June 23, 2022), <https://news.gallup.com/poll/394103/confidence-supreme-court-sinks-historic-low.aspx>.